IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. GEORGE RICHARD CROMWELL and JENNIFER SHIRLEY REYNOLDS-CROMWELL, Petitioners.	NO. 77356-4 EN BANC Filed August 10, 2006

BRIDGE, J.—George Cromwell and Jennifer Reynolds-Cromwell each seek reversal of a conviction under former RCW 69.50.401(a)(1)(ii) (2002). They argue they were improperly convicted under that statute because it did not expressly impose punishment for possession, manufacture, or delivery of methamphetamine salts, isomers, or salts of isomers, but simply imposed punishment for those activities in reference to "methamphetamine." Thus, they contend that former RCW 69.50.401(a)(1)(ii) does not apply to the salt form of methamphetamine, only its base form. We disagree and hold that the plain language of former RCW 69.50.401(a)(1)(ii) encompasses all forms of methamphetamine. We affirm the

Court of Appeals.

I

Facts and Procedural History

The Cromwells were arrested following a series of drug transactions with an informant of the Kent Police Department, in which they sold him methamphetamine. Jennifer Reynolds-Cromwell was charged with four counts of delivery of methamphetamine and one count of possession with intent to deliver methamphetamine. George Cromwell was charged as an accomplice to three counts of delivery of methamphetamine and one count of possession of methamphetamine with intent to deliver. *State v. Cromwell*, 127 Wn. App. 746, 748, 112 P.3d 1273 (2005). Both were charged under former RCW 69.50.401(a)(1)(ii).

At trial, the State's forensic expert, Dr. Suzuki, testified that the substances delivered to the informant and recovered from the Cromwell residence all contained methamphetamine and were in a salt form, most likely methamphetamine hydrochloride. *Cromwell*, 127 Wn. App. at 748. Following his testimony, the Cromwells moved to dismiss, asserting "that they had been charged with crimes involving methamphetamine, but the proof was limited to salts of methamphetamine, a substance they argued was treated differently in the relevant statutes." *Id*. at 749. The Cromwells maintained that "methamphetamine" as it is used in former RCW 69.50.401(a)(1)(ii) means only pure methamphetamine, or base methamphetamine, which is an oily liquid. The trial court denied the motion. In reference to the

methamphetamine charges, Reynolds-Cromwell was found guilty as charged, and Cromwell was found guilty of two counts of delivery and the lesser included crime of simple possession, rather than possession with intent to deliver.

The Cromwells appealed, arguing their motion to dismiss should have been granted. Division One of the Court of Appeals affirmed their convictions, reasoning that to interpret the statute as contended by the Cromwells would reach a "strained result." *Cromwell*, 127 Wn. App. at 751. The record indicated that the base form of methamphetamine has no other purpose than to produce methamphetamine in a form for sale and is rarely recovered in drug transactions. The Court of Appeals thus concluded that the legislature obviously intended to encompass methamphetamine in *all* its forms by its use of the word "methamphetamine" in the statute. The Court of Appeals conceded that its conclusion conflicts with a decision from Division Two, *State v. Morris*, 123 Wn. App. 467, 98 P.3d 513 (2004), which holds that the word "methamphetamine" as used in former RCW 69.50.401(a)(1)(ii) does not include methamphetamine salts. The Cromwells appealed to this court, and we granted review on the conflict issue only.

II

Analysis

The former RCW at issue here, RCW 69.50.401(a)(1)(ii), is part of Washington's Uniform Controlled Substances Act. Under the act, methamphetamine is classified as a Schedule II drug. RCW 69.50.206(d). Former

RCW 69.50.401(a)(1)(ii) imposes a maximum punishment of 10 years for possession, manufacture, or delivery of "methamphetamine." In contrast, former RCW 69.50.401(a)(1)(iii), a catch-all provision, states that manufacture, delivery, or possession of "any other controlled substance classified in [Schedule II]" is punishable by not more than five years in prison.

While RCW 69.50.206(d), the statute classifying methamphetamine as a Schedule II substance, makes specific reference to the salts, isomer, and salts of the isomers of methamphetamine, former RCW 69.50.401(a)(1)(ii) used the term "methamphetamine" without further elaboration. Therefore, the Cromwells argue that they were improperly charged under former RCW 69.50.401(a)(1)(ii) because they possessed the salt form of methamphetamine and that statute does not expressly include salt methamphetamine. They assert that they should have been charged under the catch-all provision contained in former RCW 69.50.401(a)(1)(iii), which imposes a five year maximum for all other Schedule II substances. Thus, they contend their charging document was insufficient and warrants reversal of their respective convictions.

The Cromwells support their argument with a line of cases from Division Two, cases that conflict with Division One's decision in this case. In *State v. Halsten*, Division Two considered whether former RCW 69.50.440 (1997), a statute that criminalized possession of the methamphetamine ingredient pseudoephedrine, applied to a suspected methamphetamine manufacturer who possessed cold tablets

containing pseudoephedrine hydrochloride. 108 Wn. App. 759, 33 P.3d 751 (2001). The *Halsten* court held that the statute at issue there did not encompass pseudoephedrine hydrochloride because the legislature did not specifically include the hydrochloride salt form of pseudoephedrine. *Id*. at 764. In *Morris,* Division Two adopted the reasoning in *Halsten* and applied it to the statute at issue here. 123 Wn. App. at 474. *Morris* held that methamphetamine as it is used in former RCW 69.50.401(a)(1)(ii) refers only to base methamphetamine (the liquid) and does not include methamphetamine hydrochloride (the salt). *Id*.

Rules of statutory interpretation require courts to give effect to the legislature's intent and purpose. *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003). In doing so, we look first to the plain meaning of a statute. *See id.* "When a statute is plain and unambiguous, its meaning must be derived from wording of the statute itself." *Cromwell*, 127 Wn. App. at 750 (citing *State v. Keller*, 143 Wn.2d 267, 276, 19 P.3d 1030 (2001)). We may also look to the dictionary to determine the meaning of nontechnical terms. *State v. McDougal*, 120 Wn.2d 334, 350, 841 P.2d 1232 (1992).

As the State's forensic expert repeatedly stressed, there is no difference between base methamphetamine and the salt form, other than their physical properties—which amounts to the difference between ice and water. Report of Proceedings (vol. 5) at 46-49. The base and salt forms of methamphetamine are simply two forms of the same substance. *Id*. at 48-49. Thus, "methamphetamine"

is plainly synonymous with both the base and salt forms.

The Cromwells argue that the legislature means what it says, and we "'cannot add words . . . when the legislature has chosen not to include that language.'" Suppl. Br. of Pet'r Cromwell at 7 (quoting *State v. Delgado*, 148 Wn.2d 723, 727, 63 P.3d 792 (2003)). We are puzzled by this admonition because it is precisely what the Cromwells ask this court to do—that is, to add the word "base" rather than "salt" to the definition of methamphetamine where the legislature has expressly stated neither. Nothing in the plain language of the statute at issue prompts us to read the word "methamphetamine" to *exclusively* mean base or salt methamphetamine. Because the legislature did not expressly refer to the salt *or* base forms of methamphetamine in the statute, Cromwell's logic would compel us to find that methamphetamine as it is used in the statute has no meaning at all. We cannot construe a statute so that it is meaningless. *See J.P.*, 149 Wn.2d at 450.[1]

The dictionary definition of methamphetamine supports the conclusion that "methamphetamine" means more than just its base form. The dictionary definition refers to the "crystalline hydrochloride" form of methamphetamine, which is a salt form of the substance. Webster's Third New International Dictionary 1422 (2002).

[1] In *Delgado*, the State asked us to construe an unambiguous statute so that it included a comparability clause. *Delgado*, 148 Wn.2d at 727-28. But nothing in the statute at issue in *Delgado* "directly included a comparability clause, nor [indirectly] incorporated [a relevant definition that would encompass a comparability clause]." *Id*. at 728-29. Thus, the language the State sought to insert was entirely lacking from the statute. Here, "methamphetamine" *itself* necessarily includes its salt form and base form. In affirming the Cromwells' convictions, we are not asked to read into the statute language we believe was omitted. Rather, we merely read the plain meaning of methamphetamine in RCW 60.50.401(a)(1)(ii), which encompasses all forms of methamphetamine, including its salt form.

And as the Court of Appeals suggested, the conclusion that "methamphetamine" plainly includes the salt form of the drug is supported by the legislature's use of "kilogram" as a unit of measurement in corresponding statutes, rather than "liquid ounce," which might be exclusively applied to a liquid. *Cromwell*, 127 Wn. App. at 752.[2]

In sum, base and salt methamphetamine are the same chemical substance.[3] Moreover, the salt form is encompassed by the dictionary definition of methamphetamine. And, given the frequency with which the salt form is recovered by law enforcement, it is reasonable to infer that the commonly understood definition of "methamphetamine" includes its salt form. Thus, we hold that when the legislature used the word "methamphetamine" in former RCW 69.50.501(a)(1)(ii), that word included all forms of the substance.

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[2] The Cromwells cite two federal cases that use "kilogram" in reference to the liquid form of the drug. Suppl. Br. of Pet'r Reynolds-Cromwell at 8. But one case they cite uses kilogram in reference to *both* liquid and refined methamphetamine, and thus does nothing to refute the conclusion that "methamphetamine" means all forms of the substance. *See United States v. Valensia*, 299 F.3d 1068, 1072 (9th Cir. 2002).

[3] The dissent points to case law from federal courts that distinguishes between different types of methamphetamine. Dissent at 9-10. But in those cases the distinction at issue concerned whether a quantity of recovered methamphetamine was comprised more predominately of an "L isomer" versus a "D isomer," not whether that quantity of isomer-carrying methamphetamine was in base or salt form. *United States v. Cook*, 891 F. Supp. 572, 573-74 (D. Kan. 1995); *United States v. Sieruc*, 1996 U.S. Dist. LEXIS 9495, at *2 (E.D. Pa. 1996); *United States v. Bogusz*, 43 F.3d 82, 88-89 (3d Cir. 1994). Here we have a question about form, not composition. As the dissent acknowledges, methamphetamine composed primarily of the innocuous "L isomer" does not produce the same intense chemical reaction in the user as that of the "D isomer," and it therefore may be reasonable to distinguish between them for sentencing purposes. Dissent at 9 (citing *Sieruc*, 1996 U.S. Dist. LEXIS 9495, at *3-4 and *Bogusz*, 43 F.3d at 89). In contrast, no evidence here suggests that a different chemical reaction is achieved by use of the salt form over base or vice versa.

The plain meaning of methamphetamine also sufficiently resolves the conflict between the divisions regarding former RCW 60.50.401(a)(1)(ii) in favor of Division One. *Cromwell* is distinguishable from *Halsten,* on which *Morris,* the case in conflict with *Cromwell*, relied. In *Halsten*, the defendant was charged under former RCW 69.50.440 with possession of pseudoephedrine with intent to manufacture. In actuality, he possessed cold pills, which contain pseudoephedrine hydrochloride, from which pseudoephedrine can be extracted, which can then be used to manufacture methamphetamine. At best, then, the defendant in *Halsten* possessed a precursor to an ingredient of methamphetamine manufacture, which was not itself a controlled substance under the charging statute there.

In contrast, the Cromwells, like the defendant in *Morris*, were charged under former RCW 69.50.401(a)(1)(ii) with possession of the controlled substance methamphetamine and were found guilty of possessing a substance identified as methamphetamine. *Halsten* is thus distinguishable by its facts. To the extent that it conflicts with this opinion, however, *Morris* is disapproved.

III

Conclusion

Base methamphetamine and its salt form are the same chemical substance. Converting the liquid base into solid methamphetamine salt is merely a functional refinement. On its face, methamphetamine as referenced in former RCW 69.50.401(a)(1)(ii) plainly means all forms of the substance. The Court of Appeals

is affirmed.

AUTHOR:
Justice Bobbe J. Bridge

WE CONCUR:

Chief Justice Gerry L. Alexander	Justice Tom Chambers
Justice Charles W. Johnson	Justice Susan Owens
Justice Barbara A. Madsen	Justice Mary E. Fairhurst
	Justice James M. Johnson